



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 29, 1994

Mr. Kevin W. Kapitan  
Assistant City Attorney  
Police Legal Advisor  
Fort Worth Police Department  
350 West Belknap Street, Room 204J  
Fort Worth, Texas 76102

OR94-833

Dear Mr. Kapitan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27156.

The Fort Worth Police Department (the "department") received an open records request from an attorney representing three of four women who were allegedly raped and robbed. Specifically, the requestor seeks all records pertaining to the department's investigation of the incident. You contend that the requested records come under the protection of sections 552.101 and 552.108 of the Government Code.<sup>1</sup>

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime ...  
[and;]

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<sup>1</sup>We note that among the records you have submitted to this office for review is a copy of the "Complainant Copy" of the "Offense/Incident Report." We assume that the department has previously released this record to the complainants and, therefore, do not further address the public nature of this document.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986).

You have submitted to this office for review witness statements, photographs, and various other records reflecting evidence that the department has gathered during the course of its investigation. Evidence of a crime is presumptively excepted by section 552.108 during the pendency of an investigation and prior to prosecution. Attorney General Opinion MW-446 (1982) (and authorities cited therein). Because the department's investigation is currently pending, the department may withhold the requested records from the public<sup>2</sup> at this time pursuant to section 552.108.<sup>3</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 27156

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<sup>2</sup>We note that the requestor's clients do not have a special right of access to these records pursuant to section 552.023 of the Government Code. An individual's right of access to private information about that individual under section 552.023 does not override exceptions to disclosure in the Open Records Act. See Open Records Decision No. 556 (1990) at 2.

<sup>3</sup>Because we resolve your request under section 552.108, we need not address your section 552.101 arguments at this time.

Enclosures: Submitted documents

cc: Mr. Kurt R. Wix  
Darwin & Wix  
5205 Jacksboro Highway  
Fort Worth, Texas 76114  
(w/o enclosures)